IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7075 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KRISHNAVADAN ALIAS RAJESH CHHAGANBHAI ZALA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 7075 of 2004

MS KRISHNA U MISHRA for Petitioner No. 1

MS ARCHANA RAVAL, LD.AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 12/08/2004

ORAL JUDGEMENT

1. By filing this petition, the petitioner-detenu has challenged his detention order dated 17.12.2003, by which he is detained as a "bootlegger", under the Gujarat

Prevention of Anti-Social Activities Act, 1985 ("PASA", for short). Along with the detention order, the petitioner has also been served with the grounds of detention.

2. In the grounds of detention, there is a reference about two criminal cases registered against the petitioner under the provisions of Bombay Prohibition Act. It is alleged against the petitioner that, the petitioner is dealing in country liquor. After considering the aforesaid cases, and after reaching subjective satisfaction, the detaining authority has detained him as a "bootlegger" under PASA. The petitioner has challenged the impugned order by way of this petition.

3. Learned advocate for the petitioner has submitted that, at the relevant time, when the detention order was passed by the authority, the petitioner was already in judicial custody in connection with the second case. It is further submitted that, the detaining authority has not properly reached the subjective satisfaction while coming to the conclusion that the petitioner, on presentation of application for bail, will get the bail and will continue his illegal activities.

4. Learned Advocate for the petitioner further submitted that, in spite of the fact that the petitioner is in judicial custody, it is mentioned in the order that, after submitting bail application at any point of time, the petitioner may continue his activity after getting the bail. It is further submitted that there is no material available with the authority for coming to the satisfaction that even though the petitioner is already in judicial custody, he will be released on bail on submitting application for bail. It is not stated as to on what basis the authority has reached the subjective satisfaction that the petitioner will continue his alleged illegal activities again after getting the bail.

5. In this connection, learned Advocate for the petitioner has relied upon the decision of the Apex Court in Amritlal & Others vs. Union Government and others reported in AIR 2000 SC 3675, wherein it is held as under:-

> "4. In Agustin's decision (1994 Supp (1) SCC 597) (supra) this Court also placed strong reliance on an earlier but oft-cited decision of this Court in Binod Singh v. District Magistrate, Dhanbad, (1986) 4 SCC 416 : (AIR

1986 SC 2090 : 1986 Cri LJ 1959) wherein it was held that if a person is in custody and there is no imminent possibility of his being released therefrom, the power of detention should not ordinarily be exercised. This Court held that there must be cogent materials before the officer passing the detention order that the detenu is likely to be released on bail. The inference must be drawn from the available material on record and must not be the ipse dixit of the officer passing the order of detention. It is in this perspective as above, that the recording of the concerned officer in the matter under reference ought to be noticed and the same reads as below:-

"Even though prosecution proceedings under Narcotic Drugs and Psychotropic Substances Act, 1985 have been initiated against Shri Amritlal, I am satisfied that there is compelling necessity in view of the likelihood of his moving an application for bail and in the event of his being granted bail, the likelihood of his indulging in illicit traffic in narcotic drugs as is evident from the trend of his activities, to detain him under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988."

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"6. The requirement as noticed above in Binod Singh's case (AIR 1986 SC 2090 : 1986 Cri LJ 1959) (supra) that there is 'likelihood of the petitioners being released on bail' that however is not available in the reasonings as provided by the concerned officer. The reasoning available is the 'likelihood of his moving an application for bail' which is different from 'likelihood to be released on bail.' This reasoning, in our view, is not sufficient compliance with the requirements as laid down.

"7. The emphasis however, in Binod Singh's case (supra) that before passing the detention order the concerned authority must satisfy himself of the likelihood of the petitioner being released on bail and that satisfaction ought to be reached on cogent material. Available cogent material is

the likelihood of having a bail application moved in the matter but not obtaining a bail order."

6. So far as the aforesaid aspect is concerned, it is, no doubt, true that the authority has not stated as to on what basis the authority has reached the subjective satisfaction that the petitioner will get bail on presenting the application for bail and he will continue the alleged illegal activities again.

7. Learned AGP has vehemently submitted that the petitioner is repeating the same type of offences and is dealing in country liquor. However, this aspect can be highlighted by the prosecuting agency before the competent court before whom bail application is pending. On this point, this Court is not required to express any opinion, as it is for the State Government to take appropriate action, if it thinks fit, in accordance with law.

8. So far as present petition is concerned, it is only connected with the order of detention passed by the detaining authority. If the petitioner is in judicial custody, and if he is not released on bail, it is for the authority concerned to oppose such application on its own merits. Releasing the petitioner from detention will have no bearing so far as the bail application is concerned and it is for the concerned Magistrate to consider this aspect whether the petitioner is a habitual offender etc., at the time of deciding the said bail application. In this behalf, of course, this Court is not expressing any opinion, as bail application is required to be decided by the Magistrate on its own merits and in accordance with law.

9. Considering the aforesaid aspect of the matter, since the authority has not stated in the order as to on what basis it has reached the subjective satisfaction that on presenting the application for bail the petitioner will be released on bail, the petition is required to be allowed.

10. In view of what is stated above, this petition is allowed. The order of detention dated 17.12.2003 is quashed and set aside. The detenu, Krishnavadan @ Rajesh Chhaganbhai Zala, is ordered to be set at liberty forthwith, if he is not required in connection with any other case. Rule is made absolute.

(P.B. Majmudar, J.)

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